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June 25, 1998

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Federal Communications Commission
Office of Secretary

BY HAND

Magalie R. Salas, Esq.
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

**Re: Reply Comments of KMC Telecom Inc. on ALTS Petition For Declaratory
Ruling Regarding Section 706; CC Docket No. 98-78**

Dear Ms. Salas:

On behalf of KMC Telecom Inc., enclosed are an original and thirteen copies of its above-referenced Reply Comments for filing. Please date stamp the enclosed extra copy.

If you have any questions, please contact me.

Very truly yours,



Eric N. Einhorn
Counsel for KMC Telecom Inc.

Enclosures

cc: Tricia Breckenridge
Michael Duke
Russell Blau
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JUN 25 1998

Federal Communications Commission
Office of Secretary

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

| | | |
|---|---|---------------------|
| In the Matter of |) | |
| |) | |
| Petition of the Association for Local |) | CC Docket No. 98-78 |
| Telecommunications Services (ALTS) for a |) | |
| Declaratory Ruling Establishing Conditions |) | |
| Necessary to Promote Deployment of |) | |
| Advanced Telecommunications Capability |) | |
| Under Section 706 of the Telecommunications |) | |
| Act of 1996 |) | |

**REPLY COMMENTS OF
KMC TELECOM INC.**

KMC Telecom Inc. ("KMC"), pursuant to the Federal Communications Commission's ("Commission") Public Notice, DA 98-1019 (rel. May 28, 1998) issued in the above-captioned proceeding, respectfully submits the following reply comments in support of the Petition of the Association for Local Telecommunications Services ("Petition") for a declaratory ruling. The BOCs' opposition comments to the Petition indicate a desire to expand BOC monopoly control of bottleneck local facilities and to prevent CLECs from providing advanced data facilities and services. The Commission should not permit the BOCs to run roughshod over the Act.

The BOCs' attempts to show that the Communications Act distinguishes between voice and data traffic are misguided. The pro-competitive provisions of the Act -- including the interconnection, collocation, unbundling, and resale requirements of Sections 251, 252,

and 271 -- apply to voice and data services and facilities alike. Despite the BOCs' assertions to the contrary, none of these provisions distinguish between voice and data traffic (or circuit-switched or packet-switched networks). Indeed, the same bottleneck local facilities are necessary to deliver both kinds of traffic. Any other result would provide the BOCs with the opportunity to further their monopoly control of these bottleneck local facilities. Moreover, denying CLECs interconnection, collocation, unbundling, and resale of these facilities and services on just, reasonable, and nondiscriminatory terms will effectively prevent CLECs from developing this market because of prohibitive costs. Accordingly, the BOCs' attempts to differentiate between voice and data traffic for the purposes of application of the Act must be rejected. The Commission should use the authority granted to it in Section 706 of the 1996 Act to further the Act's central purpose of opening local telecommunications markets to competition by making it clear that the BOCs attempt to read such a distinction into the Act is erroneous and that these provisions apply equally to both data and voice services.

The BOCs also improperly seek to interject the issue of whether CLECs are entitled to reciprocal compensation for local traffic originating with BOC customers and terminating with Internet Service Providers that are CLEC customers.¹ This issue has been extensively litigated before the state commissions, which have to date ruled in favor of CLECs in all

¹ Bell Atlantic Petition, at 2-5; GTE Petition, at 17-20.

twenty cases addressing this issue. Moreover, this issue is currently before the Commission in several proceedings.² This scheme only underscores the BOCs' anticompetitive strategy of forcing CLECs to expend limited resources litigating this issue repeatedly and attempting to stifle the development of local competition. As such, KMC will not respond to this argument except to note that it is not an issue in this docket and has been briefed extensively for the Commission in the proceedings cited in the footnote below as well as for the numerous state commissions that have already ruled in the CLECs' favor. Accordingly, the BOCs' attempts to rehash this settled issue and to confuse this docket should not be heeded.

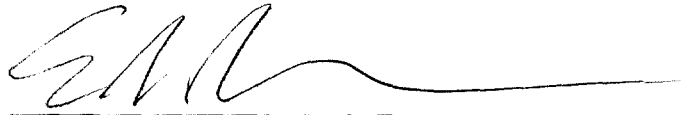
Finally, it is clear that Congress has determined that it is competition that drives the development of telecommunications choice and innovation. The BOCs, however, seek to quell competition, apparently in the hope of transferring their monopoly advantages to the provision of data services and facilities. The hurdles that the BOCs have erected to prevent competitor access to their bottleneck local facilities have already seriously hindered the CLECs from developing and providing ubiquitous advanced data services. Continued failure to foster competition as envisioned in the Act -- through the provision of interconnection, collocation, unbundling, and resale -- will stifle the deployment of advanced data and broadband facilities and services in the future. Moreover, the absence of

² See, e.g., *Request by ALTS for Clarification Commission's Rules Regarding Reciprocal Compensation for Information Service Provider Traffic*, CCB/CPD CC Docket No. 97-30, *Access Charge Reform*, CC Docket No. 96-262, *Petition of National Exchange Carrier Association*, CC Docket No. 80-286.

competition will slow the incentives for innovation in this area and will increase the prices of these services for consumers.

CLECs like KMC cannot develop and deploy advanced data services without access to the bottleneck local facilities envisioned in the Act. As ALTS has proposed in its Petition, this access must include interconnection, collocation, unbundling, and resale. KMC wholly supports this conclusion.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R. Blau', with a long horizontal flourish extending to the right.

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Dated: June 25, 1998

Counsel for KMC Telecom Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of June, 1998, a copy of KMC Telecom Inc.'s Reply Comments in Docket No. 98-78, was sent by hand delivery or first-class mail to the following parties:

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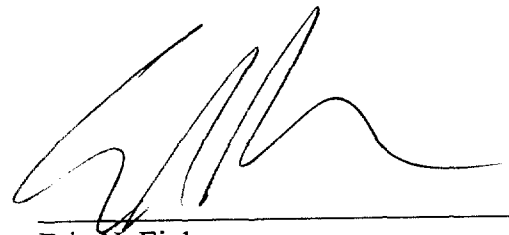
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